

DD/5 56-728 2-3223

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23 January 1956

MEMORANDUM FOR: Deputy Director (Support)
VIA: Special Support Assistant to DD/S
SUBJECT: Acceptance of Gifts by Employees

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Ext. Review Date:	
Date: 1-4-79	By: 35

1. Problem

Were the gifts received by certain contract and staff employees as enumerated in an extract (Tab A) from an I&R report [redacted] a violation of [redacted] if so what steps must be taken to comply with [redacted]

2. Facts Bearing on the Problem

a. In a memorandum (Eyes Only, not attached) dated 11 April 1955 the Inspection & Review Staff recommended "that the SR Division take - action to comply with - the cited Regulation [redacted] pertaining to the submission of a report to the Deputy Director (Support)."

b. A reply (Tab A) dated 25 April 1955 was submitted by the SR Division which recommended a revision of [redacted] except such cases and to clarify certain definitions of terms used [redacted]

c. A reply from the SSA-DD/S dated 19 September 1955 forwarded an opinion from the Office of General Counsel (Tab B) dated 15 September 1955 which suggested that an analysis of the circumstances surrounding the gifts be made and that where a violation of [redacted] was apparent the gift be re-covered by the Agency.

d. The agents are presumed dead and returning the gifts "to the donor" as required by [redacted] is impossible.

e. With the exception of [redacted] all the recipients of the gifts enumerated in Tab A are SR Division staff or contract employees. [redacted] is now, and was then, an employee of the EE Division stationed in [redacted]

f. The gifts were purchased for the donors by an intermediary, [redacted], and received from the intermediary after the donors had left on their mission so that a return to the donors was never possible at any time.

g. Regulation [redacted] insofar as it calls for a return of gifts to the donor where a bribe was intended, is contradictory to Title 18 Section 202 of

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the U. S. Code and the return of the gift to the donor prescribed by [REDACTED] is illegal. Title 18 prescribes a forfeiture of such items to the U. S. Government. The Agency has, of course, the power to dismiss the employee whether or not prosecution under Title 18 is called for. It does not, however, have the power through a regulatory issuance to provide for a penalty different from that prescribed by law.

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h. At the request of the Director a study of the current regulations, [REDACTED] and [REDACTED] dealing with gifts to Agency employees has been made (Tab C). New regulations modifying somewhat the above mentioned regulations have been forwarded to the Regulation Control Staff.

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3. Discussion

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The intention of [REDACTED] is to prohibit all gifts to CIA employees by persons or firms engaged in contractual relations with the Agency as stated in paragraph A, [REDACTED]. The regulation includes in its prohibition, but is not limited to, gifts where there is an intent to influence a decision or affect the award of a contract by the United States. The prohibition in [REDACTED] 25X1A unlike that in Title 18, is absolute and does not involve any consideration of intent. [REDACTED] is qualified only by Section E which permits gifts which would have been received were the contractual relationship not present. A careful study of all the facts surrounding the gifts involved in the current case indicates that the gifts were in every case the result of the personal friendship of the agents for the recipients and would have been given whether or not the official relationship had existed. This conclusion is the result of an investigation which included discussions with [REDACTED] and others familiar with the facts. Neither was there any evidence of an intent to affect a decision, nor to influence the award of a contract - these being offenses where the exemption in para E of [REDACTED] would not be pertinent since violation of a Federal statute would be involved. With reference to [REDACTED] there was evidence of poor judgment in agreeing to procure the gifts for the agents after they had departed since, if a violation of [REDACTED] had been involved, the recipients would have been in a most embarrassing position and liable to dismissal. [REDACTED] conduct in the handling of the finances of the two agents has already been the subject of an I&R report and a severe official reprimand has been placed in his permanent personnel file signed by the DD/P (Eyes Only, not attached).

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We understand that [REDACTED] when informed of the gift of the barometer refused to accept it. Since the incident took place in [REDACTED] and [REDACTED] is still stationed there this is only hearsay. The report indicated that the barometer was turned over to the [REDACTED]. We do not know if it was officially taken up on the station accountability records.

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Further with respect to the gifts it is indicated that the intent of the donors in the case of the records given to [REDACTED] was to replace in

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25X1A9a kind records belonging to [REDACTED] which had been used over a considerable period of time while the agents were living in a safehouse in a training status.

25X1A It is possible in considering the gifts to argue that the condition required in paragraph E of [REDACTED] i.e. "were the official relationship not present" has not been met here since the individuals involved met through their work with the Agency. We feel however that this is not the criterion intended. It is noted that the flat prohibition in [REDACTED] is an extension of the prohibition against bribes in Title 18. The former prohibits gifts even where a bribe is not involved as long as a contractual relationship exists on the side of the donor. [REDACTED] does not, however, prohibit a gift from a staff employee to an individual involved in a contractual relationship with the Agency nor to another staff employee although Section 202 of Title 18 prohibits any gift where intent to bribe is involved. As previously indicated analysis of the gifts in the current case indicates that the contractual or "official" relationship had no direct bearing on the gifts. The gifts would have been given in the same manner had the donors been staff employees or had they been working without contract. This would seem to be the proper interpretation of the exemption in Section E of [REDACTED]

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25X1A It is believed that the broad prohibition of [REDACTED] may, if strictly enforced, result in many more instances requiring a time consuming and extremely expensive investigation to determine whether [REDACTED] has been violated. This presents the danger that the regulation will be ignored because of its very severity and that even those cases which fall within the legal prohibition of Title 18 may go by undetected and unpunished.

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25X1A It is recognized that the Agency is justified in expecting higher standards of conduct than are normally required of government employees. Such was the assumption when [REDACTED] was written to prohibit not alone those gifts where intent to bribe was present but all gifts where the donor was in any way involved in a contractual relationship with the Agency.

25X1A The question then is whether [REDACTED] can be modified to preserve this strict prohibition against gifts even where no violation of law is involved but yet be administratively workable. We believe this was the intent of the DD/P recommendation cited in para 5b of Tab C. We believe the Office of General Counsel memorandum (Tab C) may be in error in assuming that the exclusion desired by the DD/P extended to gifts from foreign Governments or from persons who intended, contrary to Title 18, Sections 202 and 216, that the gifts be a bribe.

4. Conclusions

a. As a consequence of the facts and discussion above the following conclusions have been reached:

25X1A (1) The gifts noted in Tab A were within the exemption provided in para E of [REDACTED]

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- (2) [REDACTED] is deficient in several respects and should be amended to permit easier administration.

- 25X1A9a (3) The actions of [REDACTED] in purchasing the gifts for the donors were ill advised and necessitated the ensuing investigation to determine if in fact [REDACTED] had been violated. [REDACTED] unawareness of [REDACTED] is not an excuse.

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- b. Alternate courses of action which have been considered and rejected are as follows:

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- (1) An extremely strict construction of [REDACTED] could have been followed with the following results:

(a) Twelve Agency employees would have been subject to dismissal as a result of a series of gifts running from \$5 to \$38 in value - the total value of all the gifts being under \$170.

(b) The Agency would be in the position of recovering twelve gifts and disposing of them for the benefit of the U. S. Government at a probable cost far in excess of their value although no violation of any U. S. Statute could be asserted.

5. Action Recommended

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- a. It is recommended that no further action in the case be taken other than this report since the gifts were within the exemption in paragraph E of [REDACTED]

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- b. It is recommended that with respect to the poor judgment used by [REDACTED] in purchasing the gifts for the donors the censure already given in the form of the official reprimand by the DD/P be deemed a sufficient punishment.

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- c. It is recommended that consideration be given to the following changes in [REDACTED]

(1) The policy statement in para A be broadened to prohibit gifts from one Agency employee to another where the donee is the superior of the donor.

(2) The remedy proposed in para B be changed to provide that where a gift has been accepted in violation of the regulation it must be surrendered to the Agency rather than being returned to the donor. This change is consistent with Title 18 in dealing with bribes.

(3) The dismissal provided for in para C be specifically described as an optional penalty with less severe penalties being used consistent

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with the seriousness of the offense, e.g., a letter of censure, reduction in grade, etc. This lesser penalty to apply only where no violation of Title 18, Sections 202 and 216 is involved.

- (4) The exemption provided for in para E be further extended to exempt those gifts with a value of \$10 or less on the principle of de minimis. Again this would apply only where no violation of a statute is involved. As it stands [REDACTED] constitutes grounds for the dismissal of a case officer if he accepts as much as a cigarette or a cup of coffee from a contract agent or employee.

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[REDACTED]
Chief, SR Division

returned to SSA 3/22/56

Concur: *(see separate memo 16 Feb 56)*
General Counsel

Annexes

Tab A Memo for DDS/SSA from Acting Chief, SR Div. (April 25 1955)
Tab B Memo for DDS/SSA from Office of Gen'l. Counsel (September 15 1955)
Tab C Memo for DD/Pers from Office of Gen'l. Counsel (November 16 1955)

The recommendations in paragraph 5 are:

(Approved): *a y b* (Disapproved): *c*

SIGNED

Assistant DD/S

MAR 22 1956

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ORIGINAL DOCUMENT MISSING PAGE(S):

TABS A-C